

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LAW SCHOOL ADMISSION COUNCIL,  
INC.,

Plaintiff,

v.

MORLEY TATRO,  
d/b/a CAMBRIDGE LSAT

Defendant.

Civil Action No. 15:5219-MAK

**NOTICE OF PLAINTIFF LAW SCHOOL ADMISSION COUNCIL, INC. OF  
MOTION TO DISMISS CALIFORNIA ACTION BETWEEN THE PARTIES**

Plaintiff Law School Admission Council, Inc. (“LSAC”) hereby notifies the Court that, on December 17, 2015, it moved to dismiss the amended complaint filed in the Central District of California action captioned *Morley Cambridge Tatro v. Law Sch. Admission Council, Inc., et al.*, Case No. 2:15-cv-07627-RGK-JEM (“California Action”). A copy of the motion is attached. The motion relates to section III.C of LSAC’s Opposition to Defendant’s Motion To Dismiss For Lack of Personal Jurisdiction And Improper Venue (Docket Index No. 24).

Dated: December 18, 2015

Respectfully submitted,

*/s/ John V. Gorman*

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**CERTIFICATE OF SERVICE**

I, John V. Gorman, hereby certify that on December 18, 2015, I caused a copy of the foregoing document to be filed via the Court's CM-ECF system, which will send electronic notice to the following:

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25  
26  
27  
28  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

18 MORLEY CAMBRIDGE TATRO,

19 Plaintiff,

20 vs.

21 LAW SCHOOL ADMISSION  
22 COUNCIL, INC. and DOES 1-50,

23 Defendants.

Case No. 2:15-cv-07627-RGK-JEM

NOTICE OF MOTION AND  
MOTION TO DISMISS  
PLAINTIFF'S AMENDED  
COMPLAINT, OR, IN THE  
ALTERNATIVE, TO TRANSFER  
BY LAW SCHOOL ADMISSION  
COUNCIL, INC.

[FED. R. CIV. P. 12(B)(6); FED. R.  
CIV. P. 12(B)(1); 28 U.S.C. §  
1404(A), 28 U.S.C. § 2201]

25 Judge: Hon. R. Gary Klausner

26 Date: January 25, 2016

27 Time: 9:00 a.m.

Courtroom: 850

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 25, 2016 at 9:00 am, or on such  
 3 other date to be set by the Court, at 312 N. Spring St., Los Angeles, CA 90012, in  
 4 Courtroom 850, before the Honorable R. Gary Klausner, defendant Law School  
 5 Admission Council, Inc. (“LSAC”) will and hereby does move the Court, pursuant  
 6 to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and 28 U.S.C. § 2201 for  
 7 an order dismissing the First Amended Complaint (Docket Index 28) (“Amended  
 8 Complaint”) filed by plaintiff Morley Cambridge Tatro (“Plaintiff”). In the  
 9 alternative, LSAC will and hereby does move the Court, pursuant to 28 U.S.C. §  
 10 1404(a), to transfer the instant action to the United States District Court for the  
 11 Eastern District of Pennsylvania.

12 **LSAC moves to dismiss the Amended Complaint on the following  
 13 grounds:**

14 *First*, the Court should exercise its discretion to dismiss this declaratory  
 15 judgment action, which is precisely the type of action that courts routinely dismiss  
 16 in favor of later-filed actions – *i.e.*, a tactically-filed declaratory judgment action  
 17 meant to disrupt settlement discussions and to win the race to the courthouse before  
 18 LSAC could file its own affirmative copyright infringement action.

19 *Second*, the Court should dismiss the Amended Complaint with prejudice  
 20 because it fails to state a claim for relief. Plaintiff’s claim is premised on a  
 21 purported right to 30 days notice before license termination found in LSAC’s  
 22 Licensing Policy, but by its express terms, the Licensing Policy does not displace  
 23 LSAC’s right to terminate the Licensing Agreement for any reason at any time.

24 **LSAC moves in the alternative to transfer this action to the Eastern  
 25 District of Pennsylvania on the following ground:**

26 Even if the Court were to conclude that the Amended Complaint could  
 27 survive dismissal, the Court should exercise its discretion to transfer the instant  
 28

1 action to the United States District Court for the Eastern District of Pennsylvania  
 2 where the parties are already litigating, engaging in discovery, and proceeding to a  
 3 trial in a case involving overlapping – yet broader – factual and legal issues because  
 4 the interests of justice and convenience factors warrant transfer.

5 This Motion is made following a conference of counsel. LSAC did not  
 6 decide to dismiss the Amended Complaint until after seven days before the date of  
 7 filing the instant Motion. Upon determining that it was going to move to dismiss  
 8 the Amended Complaint, LSAC's counsel promptly contacted Plaintiff's counsel to  
 9 confer regarding the Motion. Although Plaintiff's counsel was unavailable for  
 10 several days, counsel for the parties were able to confer before the filing of the  
 11 Motion, and LSAC's counsel presented the bases for its Motion, but counsel were  
 12 unable to resolve their disputes regarding the issues presented herein. While LSAC  
 13 hereby notices the hearing date for its motion for January 25, 2016, it has no  
 14 objection to rescheduling the hearing date to Monday, February 1, 2016.

15 This Motion is based on this Notice of Motion and Motion, the Memorandum  
 16 of Points and Authorities filed concurrently herewith, the Request for Judicial  
 17 Notice and accompanying documents filed therewith, the Reply filed in support of  
 18 the Motion, all pleadings and papers on file or to be filed in the above-entitled  
 19 action, arguments of counsel, and any other matters that may properly come before  
 20 the Court for its consideration.

21 Dated: December 17, 2015

MORGAN, LEWIS & BOCKIUS LLP

23 */s/ John V. Gorman*  
 24 Monique E. Cho  
 25 John V. Gorman  
 Anita Polott

26 *Attorneys for Defendant Law School  
 27 Admission Council, Inc.*

28 2:15-CV-07627-RGK-JEM

NOTICE OF MOTION AND MOTION TO  
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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MORLEY CAMBRIDGE TATRO,  
Plaintiff,  
vs.  
LAW SCHOOL ADMISSION  
COUNCIL, INC. and DOES 1-50  
Defendants.

Case No. 2:15-cv-07627-RGK-JEM

**DEFENDANT LAW SCHOOL  
ADMISSION COUNCIL, INC.'S  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF ITS MOTION TO  
DISMISS OR, IN THE  
ALTERNATIVE, TO TRANSFER**

Judge: Honorable R. Gary Klausner  
Date: January 25, 2016  
Time: 9:00 a.m.  
Courtroom: 850

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1       **I. INTRODUCTION**

2           Defendant Law School Admission Council, Inc. (“LSAC”) moves to dismiss  
 3 the First Amended Complaint (Docket Index (“D.I.”) 28) (“FAC” or “Amended  
 4 Complaint”) filed by plaintiff Morley Cambridge Tatro (“Plaintiff” or “Mr. Tatro”)  
 5 pursuant to this Court’s discretionary authority under the Declaratory Judgment  
 6 Act, 28 U.S.C. § 2201, and Rules 12(b)(1) and (6) of the Federal Rules of Civil  
 7 Procedure, or, in the alternative, to transfer the action to the Eastern District of  
 8 Pennsylvania pursuant to 28 U.S.C. § 1404(a).

9           First, the Court should exercise its discretion to dismiss this declaratory  
 10 judgment action because it is precisely the type of action that courts routinely  
 11 dismiss in favor of later-filed actions – *i.e.*, a tactically-filed declaratory judgment  
 12 action meant to disrupt settlement discussions and to win the race to the courthouse  
 13 before LSAC could file its own affirmative copyright infringement action. By  
 14 Plaintiff’s own admission, he filed this case because LSAC told him that if  
 15 settlement negotiations did not result in resolution, LSAC would file a copyright  
 16 infringement action in Pennsylvania.

17           Second, the Court should dismiss the Amended Complaint because it fails to  
 18 state a claim for relief. Plaintiff’s claim is premised on a misguided and  
 19 unsupported reading of the parties’ contract – the Licensing Agreement<sup>1</sup> – which  
 20 unambiguously provides that LSAC has an unfettered right to terminate the

---

21           <sup>1</sup> Although the Amended Complaint references the Licensing Agreement (attached  
 22 hereto as Exhibit A) and LSAC’s LSAT-Question Licensing Policy (“Licensing  
 23 Policy”) (attached hereto as Exhibit B) and purports to attach these two documents  
 24 to the pleading, FAC ¶ 9, neither the Licensing Agreement nor the Licensing Policy  
 25 were, in fact, attached. However, the Court may consider these documents in  
 26 deciding the instant Motion because these documents are referenced extensively in  
 27 the Amended Complaint and form the basis for Plaintiff’s claim. *See United States*  
 28 *v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (“Even if a document is not attached  
 to a complaint, it may be incorporated by reference into a complaint if the plaintiff  
 refers extensively to the document or the document forms the basis of the plaintiff’s  
 claim.”).

1 Licensing Agreement at any time for any reason. Plaintiff's claim is premised on a  
 2 purported right to 30 days notice before license termination found in LSAC's  
 3 Licensing Policy. However, by its express terms, the Licensing Policy does not  
 4 displace the parties' bargained for contractual language contained in the Licensing  
 5 Agreement. Thus, Plaintiff's declaratory judgment claim fails as a matter of law.

6         Third, even if the Court were to conclude that the Amended Complaint could  
 7 survive dismissal, the Court should exercise its discretion to transfer the instant  
 8 action to the United States District Court for the Eastern District of Pennsylvania  
 9 where the parties are already litigating, engaging in discovery, and proceeding to a  
 10 trial in a case involving overlapping – yet broader – factual and legal issues.

11 **II. FACTUAL BACKGROUND**

12         **A. The Parties' Licensing Relationship.**

13         LSAC is a non-profit corporation that administers the Law School Admission  
 14 Test ("LSAT"). *See* FAC ¶ 3. Since 2009, LSAC has licensed to Plaintiff the non-  
 15 exclusive right to use, print, reproduce and distribute certain questions from  
 16 previous LSATs ("LSAT Questions") under certain conditions. *See id.* ¶ 9. The  
 17 parties' most recent agreement was set forth in a Licensing Agreement dated June  
 18 15, 2015. *See id.*; Ex. A. In the first paragraph, the License Agreement states that  
 19 it "is subject to LSAC's LSAT-Question Licensing Policy and the following terms  
 20 and conditions." *Id.* Paragraph 2 of the Licensing Agreement governs the license  
 21 term of the parties' agreement. It states:

22         This license expires June 30, 2017, but may be renewed at  
 23 the option of LSAC if the licensed questions are still  
 24 published by LSAC. Any violation of any term or  
 25 condition of this license voids the license. ***In addition,***  
***LSAC may terminate this license at its sole discretion at***  
***any time and for any reason.***

26 *See* Ex. A. ¶ 2 (emphasis added). To the extent that the Licensing Policy deals with  
 27 the license term, it expressly defers to the language of the License Agreement. *See*  
 28 Ex. B at 1 ("Term of the Agreement. ***Unless otherwise specified in the licensing***

1 *agreement*, all new licenses and license renewals begin on July 1 of the initial year  
 2 and expire on June 30 of the second year.”) (emphasis added). Thus, under the  
 3 express terms of the License Agreement, the license term ends June 30, 2017, or  
 4 whenever LSAC terminates it, whichever is sooner.

5 **B. The Instant Action.**

6 On August 4, 2015, LSAC sent Mr. Tatro an e-mail communication  
 7 terminating the License Agreement effective August 15, 2015. *See* Original  
 8 Complaint, Dkt. No. 1, Ex. 1 (attached as Exhibit 1 to Declaration of John V.  
 9 Gorman (“Gorman Decl.”) filed contemporaneously with Request for Judicial  
 10 Notice). Thereafter, the parties entered into negotiations to attempt to resolve their  
 11 dispute regarding, *inter alia*, Mr. Tatro’s impermissible use of LSAT’s copyrighted  
 12 materials. *Id.* ¶ 7. On September 2, 2015, while in the midst of these negotiations,  
 13 Mr. Tatro filed the Original Complaint against LSAC in California state court  
 14 asserting claims for breach of contract, breach of the covenant of good faith and fair  
 15 dealing, and declaratory judgment. *See id.* In the Original Complaint, Mr. Tatro  
 16 admitted that the basis for the lawsuit was that LSAC had informed him that, if the  
 17 parties could not resolve their dispute, LSAC would file suit for copyright  
 18 infringement in Pennsylvania. *See* D.I. 1, Ex. 1 (Gorman Decl., Ex. 1) ¶¶ 1, 10, 19.  
 19 LSAC subsequently removed the action to the instant court. *See* D.I. 1.

20 On November 19, 2015, this Court dismissed the Original Complaint in its  
 21 entirety. *See* D.I. 27. The Court dismissed the majority of Mr. Tatro’s claims with  
 22 prejudice, but allowed him an opportunity to file an amended complaint containing  
 23 only a claim regarding breach of the Licensing Agreement. *Id.* at 7. On November  
 24 30, 2015, Mr. Tatro filed the Amended Complaint containing a single claim for  
 25 relief – *i.e.*, a claim seeking a judicial declaration that LSAC did not properly  
 26 terminate the Licensing Agreement because it failed to provide Mr. Tatro with 30  
 27 days notice prior to terminating the Licensing Agreement. *See* FAC.

28

1                   **C.     The Pennsylvania Action.**

2                   As promised, on September 18, 2015, LSAC filed a complaint against Mr.  
3 Tatro for willful copyright infringement in the United States District Court for the  
4 Eastern District of Pennsylvania. *See* Complaint, *Law Sch. Admission Council, Inc.*  
5 *v. Morley Tatro d/b/a Cambridge LSAT*, C.A. No. 2:15-cv-05219-MAK (E.D. Pa.)  
6 (the “Pennsylvania Action”) (attached as Exhibit 2 to the Gorman Decl.). In the  
7 Pennsylvania Action, LSAC seeks damages for Mr. Tatro’s unauthorized use of  
8 LSAC’s copyrighted materials during different time periods, including: (1) the time  
9 period after the Licensing Agreement was terminated, and (2) the time period  
10 during which Mr. Tatro was subject to a license, but also during which he used  
11 LSAC’s copyrighted materials in a manner inconsistent with and beyond the scope  
12 of the terms of the Licensing Agreement, and therefore, in a manner unlicensed by  
13 LSAC. *See id.*

14                   **III.    ARGUMENT**

15                   **A.     The Court Should Exercise Its Discretion to Decline Jurisdiction**  
16                   **Over the Instant Declaratory Judgment Action.**

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17                   The Declaratory Judgment Act was not intended to be a strategic procedural  
18 vehicle whereby a putative defendant – such as Mr. Tatro – could strip a putative  
19 plaintiff – such as LSAC – of its choice of forum or a tool to reward the winner of a  
20 race to the courthouse. However, this is precisely what Mr. Tatro has attempted to  
21 do in filing the instant action. While this case is technically the first-filed in terms  
22 of timing, it is not entitled to any deference in determining which action should  
23 proceed. Accordingly, the Court should exercise its discretion to dismiss the instant  
24 action in favor of the Pennsylvania Action.

## **1. A Court Has Broad Discretion to Decline to Exercise Declaratory Judgment Jurisdiction.**

“Since its inception, the Declaratory Judgment Act has been understood to confer on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants.” *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). “The normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration.” *Id.* at 288; *see also id.* (“By the Declaratory Judgment Act, Congress sought to place a remedial arrow in the district court’s quiver; it created an opportunity, rather than a duty, to grant a new form of relief to qualifying litigants.”).

**2. Each of the Applicable Factors Weighs In Favor of This Court Declining to Exercise Declaratory Judgment Jurisdiction.**

In evaluating whether to exercise declaratory judgment jurisdiction, the Court may consider a variety of factors, including, *inter alia*, (1) discouraging litigants from filing declaratory actions as a means of forum shopping; (2) avoiding duplicative litigation; (3) whether the declaratory action will settle all aspects of the controversy; (4) whether the declaratory action will serve a useful purpose in clarifying the legal relations at issue; (5) whether the declaratory action is being sought merely for the purposes of procedural fencing or to obtain a ‘res judicata’ advantage; and (6) convenience of the parties and relative convenience of other remedies. *Gov’t Emps. Ins. Co. v. Dizol*, 133 F.3d 1220, 1225 & n.5 (9th Cir. 1997).<sup>2</sup> Here, these factors weigh in favor of declining declaratory judgment

<sup>2</sup> These factors were initially discussed in connection with a court's decision to decline to exercise jurisdiction over a federal action where there was a state court action pending, but they are equally applicable to the decision to decline to exercise jurisdiction in favor of another pending federal court action. *See Gribin Galleries, Div. of Hammer Holdings, Inc.*, 793 F. Supp. 233, 234 n.1 (C.D. Cal. 1992) (dismissing first-filed declaratory judgment action in favor of later-filed federal court action, and noting that these factors "appl[y] where the parallel action is pending in another federal district").

1 jurisdiction.

2 First, the events giving rise to the instant action demonstrate that it was  
3 nothing more than an improperly filed anticipatory lawsuit used for procedural  
4 fencing. While the parties were engaged in settlement negotiations regarding  
5 claims arising out of Mr. Tatro's use of LSAC's copyrighted materials, Mr. Tatro  
6 filed the instant litigation for tactical forum-shopping reasons. Indeed, in the  
7 Original Complaint, Mr. Tatro admitted that the reason for filing the lawsuit was to  
8 seek relief in advance of LSAC's potential lawsuit in Pennsylvania. *See* D.I. 1, Ex.  
9 1 (Gorman Decl., Ex. 1) ¶ 1 ("[LSAC] . . . has, instead, repeatedly and **wrongfully**  
10 **threatened to take legal action against Plaintiff in Pennsylvania** on certain claims  
11 released by the contract.") (emphasis added); ¶ 10 ("In breach of its obligations  
12 under the Contract, TATRO is informed and believes that LSAC intends to proceed  
13 with pursuing legal action against TATRO in the state of Pennsylvania alleging  
14 copyright infringement."); ¶ 19 (referencing fact that LSAC had stated "its intention  
15 to sue [Tatro] in Pennsylvania . . . .). Where a first-filed case is "reactive" to a  
16 second-filed case, a "district court should consider dismissing the [first] case  
17 pursuant to its discretion under the Act." *Maryland Cas. Co. v. Knight*, 96 F.3d  
18 1284, 1289 (9th Cir. 1996). This action is plainly a reaction to the claims that  
19 LSAC brought in the Pennsylvania Action.

20 Plaintiff's conduct is the precise sort of procedural gamesmanship that courts  
21 routinely find warrants dismissal of a "first-filed" action. *See Xoxide, Inc. v. Ford*  
22 *Motor Co.*, 448 F. Supp. 2d 1188, 1193 (C.D. Cal. 2006) (dismissing first-filed  
23 action due to anticipatory forum shopping); *K-Swiss, Inc. v. Puma AG Rudolf*  
24 *Dassler Sport*, No. CV 09-3022, 2009 WL 2049702, at \*3 (C.D. Cal. July 9, 2009)  
25 (same); *Schmitt v. JD Edwards World Solutions Co.*, No. C. 01-1009, 2001 WL  
26 590039, at \*3 (N.D. Cal. May 18, 2001) (same); *Kinetic Concepts, Inc. v. Connetics*  
27 *Corp.*, No. Civ. A. SA-04-CA0237XR, 2004 WL 2026812, at \*5 (W.D. Tex. Sept.  
28 8, 2004) (same).

1       Second, dismissing this case will avoid duplicative litigation of a limited  
2 issue that Plaintiff potentially will raise as a defense in the Pennsylvania Action:  
3 *i.e.*, whether the Licensing Agreement contained a notice provision that gave Mr.  
4 Tatro license rights in LSAC's copyrighted material beyond August 15, 2015. *See*  
5 *Sprengel v. Mohr*, No. CV 11-08742-MWF, 2013 WL 645532, at \*9 (C.D. Cal.  
6 Feb. 21, 2013) ("The existence of a license is an affirmative defense to a claim of  
7 copyright infringement and the burden of proof is ultimately on the party seeking to  
8 avoid infringement liability."). Dismissing the instant case will avoid the prospect  
9 of inconsistent verdicts on this issue.

10       Third, this Court should dismiss this case because resolution of the sole issue  
11 in this action will not completely resolve the Pennsylvania Action. Even if Mr.  
12 Tatro's declaratory judgment claim was somehow cognizable (which, as discussed  
13 at § III.B, *infra*, it is not), a ruling in his favor would, at most, merely extend the  
14 time that he was licensed under the Licensing Agreement by a few weeks.<sup>3</sup> *See*  
15 *Martin v. U-Haul Co. of Fresno*, 204 Cal. App. 3d 396, 407-09 (Cal. Ct. App.  
16 1988) (determining damages limited to those that could reasonably have accrued  
17 during 30 day notice period required for termination of contract "[b]ecause of the  
18 30-day notice provision neither party to the dealership contract could reasonably  
19 anticipate that damages resulting from a breach of that contract would exceed those  
20 potentially accruing during a 30-day period after the breach"); *Mass Bonding Ins.*  
21 *Co. v. Johnston & Harder*, 35 A.2d 721, 726 (Pa. 1943) ("The most that defendant  
22 is entitled to under this record is the loss of thirty days' net profits by reason of the  
23 failure of the plaintiff to give it due notice of [30 days before] the cancellation."<sup>4</sup>

24       <sup>3</sup> Plaintiff alleges that he did not receive the 30 days notice purportedly required.  
25 LSAC expressly reserves its right to asserts that it did in fact provide notice of  
26 material breach to Plaintiff 30 days prior to termination of the Licensing Agreement  
27 and that Plaintiff failed to cure his breach.

28       <sup>4</sup> LSAC cites to both California and Pennsylvania law herein as these are two states' laws which arguably could apply to the Licensing Agreement. LSAC's citation is

1 Importantly, a ruling in this case would *not* resolve the core issues of the  
2 Pennsylvania Action, that is (1) whether Mr. Tatro is liable for copyright  
3 infringement *after* termination of the License Agreement, and (2) whether Mr.  
4 Tatro is liable for copyright infringement for uses of LSAC's materials that were  
5 contrary to the terms of the Licensing Agreement while it was in effect. Further,  
6 this Court will not reach issues of copyright infringement, willfulness, and damages  
7 – all issues which will be adjudicated in the Pennsylvania Action.

8 Where, as here, the later-filed action is broader and encompasses more issues  
9 of dispute between the parties than the sole issue raised in the first-filed action, this  
10 factor weighs heavily in favor of dismissal of the first-filed narrower action. *See*  
11 *Lateena Girls, LLC v. Latina Media Ventures, LLC*, No. SA-06-CA-217-RF, 2006  
12 WL 2547884, at \*6 (W.D. Tex. Aug. 9, 2006) ("[T]he better alternative is to allow  
13 the broader relief action to proceed, since it certainly would address the relief  
14 sought, rather than the restricted declaratory judgment action."); *see also Budget*  
15 *Rent A Car Corp. v. Miljack, Inc.*, 760 F. Supp. 135, 137 (N.D. Ill. 1991)  
16 (exercising discretion to not entertain first-filed action where later-filed action  
17 encompassed more issues); *Koch Eng'g Co. v. Monsanto Co.*, 621 F. Supp. 1204,  
18 1208 (E.D. Mo. 1985) (same).

19 Finally, the convenience of remedies weighs in favor of dismissal of the  
20 instant action.<sup>5</sup> The Pennsylvania Action is progressing at a faster pace than this  
21 case. The close of fact discovery in the Pennsylvania Action is set for February 5,

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22 not an admission that one of these states' law applies to the parties' agreement, and  
23 LSAC reserves its right to later assert that the law of one of these jurisdictions does  
24 not govern the parties' agreement.

25 <sup>5</sup> The convenience of the parties is a neutral consideration for this Court. Litigating  
26 in California is as equally inconvenient for LSAC – a Pennsylvania resident – as  
27 litigating in Pennsylvania is for Mr. Tatro – a California resident. *See Kinetic*, 2004  
28 WL 2026812, at \*4 ("Despite Plaintiff's contentions as to the burden that would be  
placed on it in California, it appears to the Court that the Texas forum would be just  
as burdensome to Defendant as the California forum would be to Plaintiff.").

1 2016, whereas the initial pretrial conference in this case will not occur until January  
2 25, 2016. *See* Scheduling Order, Pennsylvania Action, D.I. 13 (attached as Ex. 3 to  
3 the Gorman Decl.). Thus, the Pennsylvania Action will likely resolve more  
4 expeditiously than the instant action, and provide a more convenient forum with  
5 respect to speed of relief.

6 **3. The First-Filed Doctrine Is Inapplicable to This**  
7 **Anticipatory Lawsuit.**

8 The first-filed doctrine, wherein a court normally gives deference to a first-  
9 in-time filed action over a later-filed action, should not impact this Court's  
10 discretion to decline jurisdiction over the instant action. That doctrine is  
11 inapplicable here where the first-in-time filed action was nothing more than an  
12 effort by a party (such as Mr. Tatro) to use the filing of a declaratory judgment  
13 action as a tactical device to deprive the real plaintiff in interest (such as LSAC) of  
14 its choice of forum. *See Xoxide*, 448 F. Supp. 2d at 1192 ("The Court may, in its  
15 discretion, rely on equitable grounds, such as 'when the filing of the first suit  
16 evidences bad faith, ***anticipatory suit, or forum shopping,***' to determine whether to  
17 depart from the first to file rule.") (emphasis in original). Indeed, the "filing of a  
18 declaratory judgment action is a red flag that there may be compelling  
19 circumstances to depart from the first-to-file rule." *See Inherent.com v.*  
20 *Martindale-Hubbell, Lexis/Nexis, Inc.*, 420 F. Supp. 2d 1093, 1100 (N.D. Cal.  
21 2006) (citation and internal quotation marks omitted). Where, as here, the two  
22 lawsuits are filed close in time and one is filed in anticipation of the other, any  
23 deference normally accorded to the first-filed action is eliminated. *See Oliver &*  
24 *Tater Enters., Inc. v. Foundations Worldwide, Inc.*, No. CV 13-01683-RGK, 2013  
25 WL 4446827, at \*4 (C.D. Cal. June 18, 2013) (Klausner, J.) ("The facts support a  
26 finding that, while Defendants were claiming to pursue a non-legal resolution, they  
27 were preparing an anticipatory filing. Circumstances here weigh against the  
28 discretionary application of the first-to-file rule, and the Court declines its

1 application.”).

2 **B. The Court Should Dismiss This Action Because Plaintiff Has Not**  
3 **Stated a Cognizable Claim For Relief.**

4 **1. The Court May Dismiss Plaintiff’s Claim Based on Plain**  
5 **and Unambiguous Language of the Licensing Agreement.**

6 “A court may resolve contractual claims on a motion to dismiss if the terms  
7 of the contract are unambiguous.” *Ellsworth v. U.S. Bank, N.A.*, 908 F. Supp. 2d  
8 1063, 1084 (N.D. Cal. 2012). Indeed, “courts have granted motions to dismiss on  
9 contract claims where it is clear from the unambiguous terms of the contract that  
10 the alleged conduct by the defendant does not constitute a breach of contract.”  
11 *Mieuli v. DeBartolo*, No. C-00-3225-JCS, 2001 WL 777447, at \*5 (N.D. Cal. Jan.  
12 16, 2001); *see Campbell v. Allstate Ins. Co.*, No. 97-9426-CMB, 1998 WL 657488,  
13 at \*1 (C.D. Cal. Aug. 6, 1988) (dismissing breach of contract claim on basis that the  
14 defendant’s acts were consistent with the plain language of the contract and  
15 therefore did not breach the contract). “Contract interpretation is a question of  
16 law.” *Mendler v. Winterland Production, Ltd.*, 207 F.3d 1119, 1121 (9th Cir.  
17 2000).

18 **2. Plaintiff’s Allegations Regarding Purported Breach Fail as a**  
19 **Matter of Law.**

20 In the Amended Complaint, Plaintiff asserts a single claim for relief seeking  
21 a declaration that LSAC did not properly terminate the parties’ Licensing  
22 Agreement because it failed to provide 30 days notice prior to terminating the  
23 agreement. *See* FAC.<sup>6</sup> Plaintiff’s claim is premised on the incorrect conclusion

24  
25 <sup>6</sup> At paragraph 13 of the FAC, Plaintiff alleges that “the provision relied on by  
26 Defendant is procedurally and substantively oppressive and unconscionable and  
27 thus unenforceable.” *See* FAC ¶ 13. This allegation is not in accord with this  
28 Court’s November 19 Order. As the Court will recall, Plaintiff’s Original  
Complaint sought a judicial declaration that, *inter alia*, the Licensing Agreement  
contains unenforceable terms. *See* Original Complaint, D.I. 1, Ex. 1 (Gorman  
Decl., Ex. 1) ¶¶ 26(b), 28 & p. 7, ¶ C. LSAC moved to dismiss, *inter alia*, this

1 that the Licensing Agreement provides Mr. Tatro with a right to notice before  
2 termination. However, this conclusion disregards the plain language of the  
3 agreement, and is based on a mistaken interpretation that presumes a conflict  
4 between provisions and that does not give effect to the entire contract. Under well-  
5 established contract interpretation principles, this Court should find that the contract  
6 unambiguously provides Plaintiff with **no** notice right, and should dismiss his claim  
7 for relief.<sup>7</sup>

8 The parties' Licensing Agreement expressly and unambiguously provides  
9 that LSAC need not provide any notice before ending the license. Indeed, it states  
10 that "LSAC may terminate this license at its sole discretion at any time and for any  
11 reason." *See* Ex. A ¶ 2. This is reason alone for dismissal of Plaintiff's claim.  
12 Plaintiff tries to overcome this clear contractual provision by alleging that it  
13 "conflicts" with a provision of LSAC's Licensing Policy stating that "LSAC may  
14 terminate any license in the event that a licensee violates a material term or  
15 condition of the license, which is not cured by the licensee within 30 days after  
16 receipt of written notice of such violation by LSAC." FAC ¶ 10; Ex. B at 4, ¶ 5.

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17 count because the Plaintiff failed to plead any facts – let alone facts giving rise to a  
18 plausible inference – supporting the allegation of unenforceability. *See* D.I. 15-1 §  
19 IV.C. The Court granted LSAC's motion to dismiss, and granted Plaintiff leave to  
20 amend only with respect to "Plaintiff's claim for breach of the Licensing  
21 Agreement." *See* D.I. 27 at 7-8. The Court did not allow Plaintiff leave to amend  
22 with respect to his allegations that the Licensing Agreement contains unenforceable  
23 terms. As such, Plaintiff's allegation with respect to the enforceability of the  
24 License Agreement should be struck because it violates the Court's November 19  
Order and for all the reasons originally stated in LSAC's Original Motion to  
Dismiss.

25 <sup>7</sup> Without conceding the applicability of California law to any of Plaintiff's claims  
26 or any of the purported contracts at issue, LSAC cites to California law herein  
27 because Pennsylvania and California law are in accord in relevant part. *See* *Ins. Co.*  
28 *of N. Am. v. Fed. Exp. Corp.*, 189 F.3d 914, 921 (9th Cir. 1999) ("If there is no true  
conflict, then the forum is entitled to apply its own law.") (internal quotation marks  
omitted).

1 But plaintiff is mistaken, because there is no actual conflict between these  
2 provisions.

3 “In construing a contract, a Court is required to construe the contract as a  
4 whole, and the language of any apparently inconsistent or contradictory provisions  
5 must be interpreted, if reasonably possible, in a way that harmonizes those  
6 provisions and gives effect to the entire contract, and not in a way that renders a  
7 provision irrelevant, inoperative or meaningless. *See* West’s Ann. Cal. Civ. Code §  
8 1641; *Logan v. Union Sec. Ins. Co.*, No. CV 14-1174 DMG, 2015 WL 3745047, at  
9 \*11 (C.D. Cal. Mar. 31, 2015). Here, the explicit language of the Licensing Policy  
10 itself provides the basis for harmonizing these provisions. Specifically, the  
11 Licensing Policy makes clear that, with respect to the term of the agreement, the  
12 language of the Licensing Agreement supersedes any differing language in the  
13 Licensing Policy. *See* Ex. B at 1, ¶ 1 (“Term of Agreement: ***Unless otherwise  
specified in the licensing agreement***, all new licenses and license renewals begin  
15 on July 1 of the initial year and expire on June 30 of the second year.” (emphasis  
16 added)). Thus, because the negotiated Licensing Agreement specifies that the  
17 license term ends either on June 30, 2017 or “at [LSAC’s] sole discretion at any  
18 time and for any reason,” such a provision trumps any “conflicting” term provisions  
19 of the Licensing Policy, including any purported 30-day notice provision.

20 Plaintiff’s interpretation of the parties’ agreement is untenable because it puts  
21 a provision of the License Agreement in direct conflict with a provision of the  
22 Licensing Policy, forcing one or the other to be superfluous. This reading fails to  
23 harmonize the two provisions in violation of well-established contract interpretation  
24 principles. *See Logan*, 2015 WL 3745047, at \*11.

25 Accordingly, because the plain language of the Licensing Agreement and  
26 Licensing Policy referenced therein indicates that Licensing Agreement conditions  
27 on term supersede those of the Licensing Policy, Plaintiff had no notice right under  
28 the Licensing Agreement, and its claim for declaratory relief fails as a matter of

1 law.

2 **C. Alternatively, the Court Should Transfer the Instant Action to the**  
3 **Eastern District of Pennsylvania.**

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4 As discussed previously, the Court should dismiss this case. However, to the  
5 extent the Court is inclined to permit the instant action to survive a motion to  
6 dismiss, the action should be transferred to the Eastern District of Pennsylvania.

7 Under 28 U.S.C. § 1404(a), “[f]or the convenience of parties and witnesses,  
8 in the interest of justice, a district court may transfer any civil action to any other  
9 district or division where it might have been brought.” Section 1404(a) gives courts  
10 broad discretion to “adjudicate motions for transfer according to an individualized,  
11 case-by-case consideration of convenience and fairness.” *Stewart Org., Inc v.*  
12 *Ricoh Corp.*, 487 U.S. 22, 29 (1988). Transfer must be for the convenience of the  
13 parties and witnesses and in the interests of justice. *See* 28 U.S.C. 1404. Courts  
14 within the Ninth Circuit balance various considerations that can be used in  
15 weighing these factors: (1) Plaintiff’s choice of forum, (2) convenience of the  
16 parties, (3) convenience of the witnesses, (4) ease of access to the evidence, (5)  
17 familiarity of each forum with the applicable law, (6) feasibility of consolidation of  
18 other claims, (7) any local interest in the controversy, and (8) the relative court  
19 congestion and time of trial in each forum. *See Kierstead v. Experian Info.*  
20 *Solution, Inc.*, No. SACV-10-1694, 2011 WL 1375361, at \*2 (C.D. Cal. Apr. 11,  
21 2011); *see also Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843  
22 (9th Cir. 1986). Weighing these factors demonstrates that transfer of this case to  
23 the Eastern District of Pennsylvania is appropriate.

24 **1. The Instant Action Could Have Been Brought In**  
25 **Pennsylvania.**

26 The Eastern District of Pennsylvania is a venue in which the instant action  
27 could have been brought. It is home to LSAC and where a large portion of events  
28 giving rise to the instant action – including negotiation of the Licensing Agreement

1 – took place.

2 **2. The Convenience Factors Weigh In Favor of Transfer.**

3 **a. Plaintiff's Choice of Forum Is Entitled to Little  
4 Weight.**

5 Plaintiff's choice of forum is entitled to little weight where, as here, the  
6 Plaintiff has filed a declaratory judgment action in an effort to forum shop in order  
7 to avoid having to litigate in another forum where another party had stated its  
8 intention to file a lawsuit. *See Int'l Bhd. of Teamsters v. N. Am. Airlines*, No. C05-  
9 0126, 2005 WL 947083, at \*3 (N.D. Cal. Apr. 20, 2005) ("[L]ittle deference given  
10 to plaintiff's choice of forum in cases of anticipatory suits and forum shopping.")  
11 (citation omitted).

12 **b. The Convenience of Parties Factor Is Neutral.**

13 The Eastern District of Pennsylvania is a more convenient forum for LSAC  
14 to litigate this dispute, and keeping the instant case in the Central District of  
15 California is inconvenient for, and imposes a financial burden and hardship upon,  
16 LSAC. Plaintiff would presumably prefer to litigate in this District, and will likely  
17 contend that he will suffer hardship if forced to litigate in the Eastern District of  
18 Pennsylvania. Accordingly, this factor is neutral.

19 **c. The Convenience of Witnesses Factor Weighs In  
20 Favor of Transfer.**

21 In balancing the convenience of witnesses, the "convenience of non-party  
22 witnesses is more important factor than the convenience of party witnesses." *Metz*  
23 *v. U.S. Life Ins. Co.*, 674 F. Supp. 2d 1141, 1147 (C.D. Cal. 2009) (internal  
24 quotation marks omitted). Here, the vast majority of witnesses likely to have  
25 information pertinent to the instant case are current or former employees of LSAC  
26 located in Pennsylvania who had dealings with Mr. Tatro during the license  
27 negotiations. By contrast, Plaintiff operates a "sole proprietorship" (FAC ¶ 1), and,  
28 thus, he would be the sole witness located in California. Accordingly, because all

1 likely witnesses except for Plaintiff are located in the Pennsylvania area, this factor  
2 weighs in favor of transfer. *Metz*, 674 F. Supp. 2d at 1148 (finding this factor  
3 weighed in favor of transfer where defendant's witnesses were located out of state  
4 and comprised the majority of witnesses who would testify regarding contract  
5 negotiations); *see also Szegedy v. Keystone Food Prods.*, No. CV 08-5369-CAS, 2009  
6 WL 2767683, at \*3-4 (C.D. Cal. Aug. 26, 2009) (concluding same).

7 **d. Ease of Access to Evidence Is a Neutral Factor.**

8 The ease of access to evidence factor is neutral in light of the fact that the  
9 parties can each produce digital copies of their evidence. *See May v. Haas*, No.  
10 2:12-cv-01791, 2013 WL 4010293, at \*7 (E.D. Cal. Aug. 5, 2013) ("[E]ase of  
11 access to documents does not weigh heavily in the transfer analysis, given that  
12 advances in technology have made it easy for documents to be transferred to  
13 different locations.") (internal quotation marks omitted).

14 **3. The Interest of Justice Factors Weigh In Favor of Transfer.<sup>8</sup>**

15 **a. Court's Familiarity With Governing Law Is Neutral.**

16 This case involves issues of contract interpretation. Whether California or  
17 Pennsylvania law applies to those issues, this Court and the Pennsylvania Court are  
18 equally capable of applying the appropriate governing law. *See Burke v. USF*  
19 *Reddaway, Inc.*, No. 2:12-cv-02641, 2013 WL 85428, at \*5 (E.D. Cal. Jan. 8,  
20 2013). Accordingly, this factor is neutral.

21  
22  
23  
24 <sup>8</sup> Although not expressly included as a sub-factor, in evaluating the interests of  
25 justice, the fact that the instant action was anticipatorily filed to win a race to the  
26 courthouse to ensure Plaintiff of its choice of forum demonstrates that the interests  
27 of justice weigh heavily in favor of transfer. *See Gerin v. Aegon USA, Inc.*, No. C  
28 06-5407-CBA, 2007 WL 1033472, at \*8 (N.D. Cal. Apr. 4, 2007) ("The interests of  
justice strongly weigh in favor of granting the motion to transfer in order to  
discourage forum-shopping.").

**b. Feasibility of Consolidation With Other Claims Favors Transfer.**

“The feasibility of consolidation is a significant factor in a transfer decision, and the pendency of an action in another district is important because of the positive effects it might have in possible consolidation of discovery and convenience to witnesses and parties.” *Cardoza v. T-Mobile USA Inc.*, No. 08-5120-SC, 2009 WL 723843, at \*5 (N.D. Cal. Mar. 18, 2009). To the extent the claim pending in the instant action is not dismissed, it can easily be consolidated with the copyright infringement claim that is proceeding at a faster pace in Pennsylvania.

**c. Local Interest In the Controversy Is Neutral.**

Pennsylvania and California each have interests in protecting their residents and enforcing their contractual rights. Accordingly, this factor is neutral.

**d. Relative Court Congestion Weighs In Favor of Transfer.**

The Pennsylvania Action is farther along than the instant action. In the Pennsylvania Action, the Court already held a Rule 16 conference in November 2015, discovery is underway, and fact discovery is set to close on February 5, 2016. *See* Pennsylvania Action, D.I. 13 (Gorman Decl., Ex. 3). In the instant action, the Court will not even hear argument on the instant Motion or convene an initial pretrial conference until January 25, 2015 – just 11 days before the close of fact discovery in the Pennsylvania Action. *See* D.I. 16. As such, transfer of this case would likely result in a faster adjudication of the parties' disputes.

Moreover, a study of U.S. District Courts across the United States during the 12-month period ending March 31, 2014 demonstrates that the median time to trial in the Eastern District of Pennsylvania is 16.7 months, whereas the median time to trial in the Central District of California is 21.4 months. *See* Tab C-5, U.S. District Court – Median Time Intervals from Filing to Disposition of Civil Cases

1 Terminates, by District and Method of Disposition, During the 12-Month Period  
2 Ending March 31, 2014, available at [www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2014/03/31](http://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2014/03/31) (attached hereto as Ex. C). Accordingly,  
3 because the court congestion is less in the Eastern District of Pennsylvania when  
4 compared to the Central District of California, this factor weighs in favor of  
5 transfer.

7 **IV. CONCLUSION**

8 For the reasons set forth herein, LSAC respectfully requests that the Court  
9 exercise its discretion to dismiss the Amended Complaint with prejudice in favor of  
10 the pending Pennsylvania Action or for failure to state a claim. Alternatively,  
11 LSAC requests that the Court transfer the instant action to the Eastern District of  
12 Pennsylvania.

13 Respectfully submitted,

14 DATED: December 17, 2015

15 MORGAN, LEWIS & BOCKIUS LLP

16 /s/ John V. Gorman

17 Monique E. Cho  
18 John V. Gorman  
Anita Polott

19 *Attorneys for Defendant Law School  
20 Admission Council, Inc.*

21  
22  
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27  
28

## **PROOF OF SERVICE**

I, John V. Gorman, hereby declare that on December 17, 2015, I filed the foregoing Defendant Law School Admission Council, Inc.'s Motion to Dismiss via the Court's CM/ECF System whereby a notice of filing was sent via email to the following:

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/s/ John V. Gorman  
John V. Gorman

# **Exhibit A**



Law School Admission Council  
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LEGAL AFFAIRS—LICENSING

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- G. Licensee agrees not to construct a sample LSAT, with or without a score conversion table, from licensed questions drawn from different LSAT forms. Should Licensee wish to produce a sample LSAT, it must use a license for an intact LSAT form, or purchase printed tests from LSAC.
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#### 5. Security Methods

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Licensee will employ a method called "character cloaking," whereby the visible/printable text will not match the extracted text. The file is encrypted and secured to prevent modification and/or text extraction.

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- Individual sections from all available tests
- Question (LR) groupings from tests 1-38 as well as a bundle with all these groupings
- Game (AR) groupings from tests 1-38 as well as a bundle with all these groupings
- Passage (RC) groupings from tests 1-38 as well as a bundle with all these groupings
- Books with targeted drilling material from various test ranges (1-20, 21-40, 41-60, 41-50, 51-60, 61-70, etc.)
- Full explanations, both for complete tests and for individual sections

Licensee agrees to provide LSAC with the name and address of its printer within ten days of the execution of this agreement. Licensee will forward a copy of the license agreement to its printer.

Licensee further agrees to provide LSAC with a sample of any of its LSAT-related materials, whether or not those materials contain licensed questions, as well as a sample of any advertisements or marketing materials for their products or services, with or before the first accounting report.

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#### 10. Auxiliary Information

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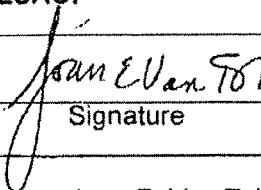
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**12. Audit**

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**FOR LSAC:**

	Signature
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**FOR LICENSEE:**

Signature

Joan E. Van Tol	Name
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Name

General Counsel	Title
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Title

3/16/15	Date
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Date

# **Exhibit B**



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6. If a licensee should offer a complete, intact LSAT form to the general public, that form must be accompanied by instructional or explanatory content developed and added by the licensee. Under no circumstances is it permissible to offer LSAT forms for sale to the general public without such additional material.
7. *Licensing LSAT Content for Online Use*

## 7. Licensing LSA Content for Online Use

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- prevent emailing, forwarding, sharing, unauthorized access and unauthorized distribution,
- limit printing to one time,
- allow the document to open only on one device,
- prevent screen capturing,
- control and instantly revoke access if a violation occurs,
- identify abusers,
- expire access after a mutually agreed upon timeframe and/or number of views, and
- maintain a complete audit trail of how, when, and where LSAC's material is being used.

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- <http://www.locklizard.com/index.htm>
- [http://www.artistscope.com/digital\\_rights\\_management.asp](http://www.artistscope.com/digital_rights_management.asp)

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9. Licensees must provide LSAC with a print, digital, or video sample of any products containing licensed questions as well as a sample of any advertisements or marketing materials for their products or services. These samples must be provided along with or prior to the first licensing accounting, as specified on the licensing agreement.

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PrepTests 46 – 59	\$5 per test, per copy
PrepTests 32 - 45	\$4 per test, per copy
PrepTests 17 - 31	\$3 per test, per copy
PrepTests 1-16	\$2 per test, per copy
Form 96, unreleased	\$10 per test, per copy
February tests from 1996, 1999, and 2000	\$3 per test, per copy

The fee for licensee reproduction of writing-sample prompts is 2 cents per copy.

There is no fee for licensee copying of test instructions.

##### **2. Calculating License Fees for Individual Test Questions**

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# **Exhibit C**

**Table C-5.****U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases**

Terminated, by District and Method of Disposition,  
During the 12-Month Period Ending March 31, 2014

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
<b>TOTAL</b>	<b>199,787</b>	<b>8.6</b>	<b>43,141</b>	<b>5.0</b>	<b>127,635</b>	<b>8.6</b>	<b>26,306</b>	<b>12.7</b>	<b>2,705</b>	<b>24.4</b>
DC	1,748	7.9	818	5.4	886	9.8	9	-	35	31.0
1ST	6,311	12.8	1,127	3.6	3,684	15.5	1,404	14.8	96	27.3
ME	356	7.9	151	5.5	188	9.3	11	14.5	6	-
MA	2,563	9.0	638	2.6	772	7.5	1,099	14.4	54	27.6
NH	471	8.6	75	2.9	208	6.7	181	15.1	7	-
RI	1,988	36.8	97	8.6	1,840	38.4	37	19.5	14	33.1
PR	933	13.0	166	7.5	676	13.4	76	19.0	15	21.6
2ND	18,289	8.7	3,278	4.8	10,477	8.3	4,198	12.0	336	31.9
CT	1,734	9.7	700	6.2	672	10.0	318	17.3	44	34.5
NY,N	1,171	11.0	230	3.4	575	12.7	339	14.4	27	34.7
NY,E	5,601	8.6	1,220	5.6	3,121	8.2	1,163	11.9	97	30.9
NY,S	8,310	8.1	897	3.5	4,941	7.1	2,318	11.3	154	31.5
NY,W	1,262	9.4	204	3.6	994	10.8	55	29.8	9	-
VT	211	9.5	27	4.3	174	9.6	5	-	5	-
3RD	23,793	8.1	2,778	3.9	16,506	7.0	4,259	13.5	250	26.7
DE	1,759	7.7	680	5.0	928	9.0	116	13.6	35	31.4
NJ	6,766	7.5	400	3.0	3,605	4.1	2,714	16.6	47	36.8
PA,E	11,464	8.7	812	3.6	9,313	9.1	1,239	9.3	100	16.7
PA,M	1,596	8.1	412	5.0	1,054	8.7	100	16.0	30	26.7
PA,W	1,939	7.2	309	3.0	1,584	8.1	21	24.3	25	27.0
VI	269	15.6	165	13.1	22	20.0	69	18.1	13	45.9
4TH	12,561	7.6	2,179	6.0	8,857	7.4	1,343	9.9	182	20.1
MD	2,975	7.6	429	7.3	1,923	5.9	582	12.0	41	22.7
NC,E	1,226	8.5	332	8.0	887	8.6	3	-	4	-
NC,M	698	10.9	432	8.5	219	14.5	38	25.1	9	-
NC,W	868	9.1	222	6.7	545	9.1	88	12.1	13	24.3
SC	2,203	9.4	195	3.2	1,918	10.0	57	9.9	33	25.5
VA,E	2,203	5.5	331	4.3	1,311	4.5	508	7.3	53	11.9
VA,W	680	8.5	167	4.0	445	9.4	55	9.4	13	15.0
WV,N	378	9.0	50	4.4	320	9.4	3	-	5	-
WV,S	1,330	6.2	21	6.6	1,289	6.2	9	-	11	23.7

**Table C-5. (March 31, 2014—Continued)**

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
<b>5TH</b>	<b>20,750</b>	<b>7.5</b>	<b>5,535</b>	<b>5.0</b>	<b>12,712</b>	<b>7.5</b>	<b>2,151</b>	<b>11.4</b>	<b>352</b>	<b>23.1</b>
LA,E	3,728	4.9	112	1.8	2,493	4.7	1,057	10.4	66	20.5
LA,M	621	12.2	127	9.3	451	11.9	34	26.1	9	-
LA,W	1,133	11.5	408	7.5	654	12.8	44	21.1	27	30.8
MS,N	696	9.8	206	7.6	288	8.2	186	14.3	16	19.5
MS,S	1,454	9.7	805	6.6	585	11.0	38	19.8	26	26.4
TX,N	3,322	6.4	661	4.3	2,619	6.9	1	-	41	22.8
TX,E	2,956	9.1	830	5.0	2,015	10.0	58	19.0	53	26.1
TX,S	4,426	6.8	1,657	4.2	2,054	7.8	642	9.2	73	19.7
TX,W	2,414	6.9	729	5.6	1,553	6.8	91	15.3	41	21.6
<b>6TH</b>	<b>15,991</b>	<b>9.2</b>	<b>4,921</b>	<b>5.7</b>	<b>7,227</b>	<b>8.8</b>	<b>3,642</b>	<b>12.5</b>	<b>201</b>	<b>26.8</b>
KY,E	954	9.0	124	5.4	795	9.1	23	20.0	12	35.4
KY,W	1,030	8.2	172	5.5	804	8.2	43	16.8	11	27.2
MI,E	4,273	8.4	985	3.3	1,443	5.8	1,807	12.9	38	27.2
MI,W	998	8.3	184	2.2	515	8.0	288	12.3	11	29.8
OH,N	2,771	8.5	868	4.6	1,107	10.7	760	10.1	36	16.9
OH,S	2,277	9.6	1,036	6.0	602	11.8	609	12.6	30	29.4
TN,E	1,264	11.3	597	9.0	555	11.9	90	17.1	22	25.6
TN,M	1,432	11.9	341	24.4	1,057	9.8	7	-	27	28.0
TN,W	992	11.2	614	11.7	349	9.5	15	22.9	14	22.8
<b>7TH</b>	<b>16,080</b>	<b>8.6</b>	<b>3,945</b>	<b>5.0</b>	<b>9,773</b>	<b>8.8</b>	<b>2,192</b>	<b>12.3</b>	<b>170</b>	<b>27.3</b>
IL,N	8,154	6.8	2,189	5.1	5,294	7.0	578	11.1	93	31.2
IL,C	778	9.6	355	5.3	409	12.6	1	-	13	29.4
IL,S	2,133	18.7	527	16.8	1,586	19.2	4	-	16	19.0
IN,N	1,351	11.0	231	2.8	569	9.8	537	15.4	14	26.1
IN,S	1,957	8.9	263	3.7	875	7.4	805	11.6	14	27.1
WI,E	1,064	6.1	244	3.1	789	7.2	23	8.5	8	-
WI,W	643	7.5	136	3.1	251	6.0	244	11.1	12	15.2
<b>8TH</b>	<b>15,850</b>	<b>14.1</b>	<b>5,511</b>	<b>9.6</b>	<b>9,081</b>	<b>15.7</b>	<b>1,074</b>	<b>13.5</b>	<b>184</b>	<b>22.5</b>
AR,E	4,565	59.6	1,684	61.1	2,838	59.2	4	-	39	18.4
AR,W	901	12.5	138	12.4	756	12.4	0	-	7	-
IA,N	388	8.6	69	8.4	309	8.6	2	-	8	-
IA,S	481	9.6	99	6.0	214	7.4	153	14.8	15	25.2
MN	4,430	12.6	1,403	1.7	2,207	27.0	792	13.0	28	23.0
MO,E	2,173	8.5	1,030	5.6	1,105	10.9	6	-	32	22.6
MO,W	1,951	10.5	944	7.6	891	12.8	98	12.7	18	23.3
NE	496	9.0	54	2.2	411	9.4	9	-	22	22.4
ND	237	13.5	7	-	222	13.2	4	-	4	-
SD	228	14.3	83	11.7	128	14.5	6	-	11	30.9

**Table C-5. (March 31, 2014—Continued)**

Circuit and District	Total Cases		No Court Action		Court Action					
	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Before Pretrial		During or After Pretrial		Trial	
					Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months	Number of Cases	Median Time Interval in Months
<b>9TH</b>	<b>33,582</b>	<b>7.4</b>	<b>8,725</b>	<b>4.3</b>	<b>21,025</b>	<b>7.7</b>	<b>3,377</b>	<b>13.3</b>	<b>455</b>	<b>24.1</b>
AK	249	9.2	35	5.2	210	10.5	0	-	4	-
AZ	2,439	7.7	128	2.3	1,679	6.4	584	13.5	48	29.2
CA,N	4,979	8.1	984	4.4	2,478	7.0	1,459	12.3	58	28.4
CA,E	2,577	8.8	880	5.7	1,618	10.4	50	19.0	29	31.5
CA,C	11,560	5.8	4,073	4.3	7,130	6.6	211	14.2	146	21.4
CA,S	2,345	6.6	385	3.3	1,224	5.3	711	13.2	25	27.0
HI	696	7.2	348	4.8	292	8.3	42	23.7	14	14.5
ID	392	11.6	32	1.9	277	10.8	72	16.7	11	23.6
MT	435	9.2	142	4.6	152	7.4	129	14.1	12	19.1
NV	2,143	8.9	265	3.9	1,776	9.8	86	8.6	16	41.5
OR	1,926	11.3	502	8.6	1,375	11.6	8	-	41	22.5
WA,E	865	13.0	262	5.4	586	14.8	6	-	11	24.1
WA,W	2,917	6.7	657	2.3	2,210	7.5	10	20.2	40	18.7
GUAM	29	23.2	7	-	13	28.9	9	-	0	-
NMI	30	14.9	25	14.0	5	-	0	-	0	-
<b>10TH</b>	<b>8,503</b>	<b>8.8</b>	<b>2,114</b>	<b>4.6</b>	<b>5,203</b>	<b>9.2</b>	<b>1,042</b>	<b>13.7</b>	<b>144</b>	<b>24.7</b>
CO	2,658	6.2	905	4.4	1,630	6.6	81	18.4	42	27.2
KS	1,246	8.6	339	4.8	787	9.0	103	17.8	17	24.6
NM	998	10.3	259	6.5	412	10.7	306	12.9	21	26.9
OK,N	663	9.6	66	3.1	573	10.2	17	18.2	7	-
OK,E	428	13.7	20	2.5	394	14.0	7	-	7	-
OK,W	1,089	8.5	251	4.1	469	8.0	347	10.8	22	18.2
UT	1,204	11.6	208	5.4	880	12.4	94	22.8	22	36.4
WY	217	9.6	66	3.6	58	8.4	87	13.2	6	-
<b>11TH</b>	<b>26,329</b>	<b>8.0</b>	<b>2,210</b>	<b>4.0</b>	<b>22,204</b>	<b>8.1</b>	<b>1,615</b>	<b>12.2</b>	<b>300</b>	<b>20.5</b>
AL,N	4,906	22.7	48	2.0	4,808	22.7	22	30.2	28	21.7
AL,M	728	9.8	71	4.4	605	9.6	41	17.7	11	24.9
AL,S	535	8.1	117	3.8	396	8.5	16	16.3	6	-
FL,N	1,357	6.7	61	3.3	1,275	6.9	10	22.3	11	24.5
FL,M	6,748	8.3	509	6.2	6,034	8.1	112	17.4	93	21.4
FL,S	6,717	4.7	626	3.2	5,943	4.8	57	11.5	91	16.1
GA,N	4,055	6.7	363	2.6	2,318	4.8	1,339	11.2	35	28.1
GA,M	775	9.8	230	5.8	523	11.0	3	-	19	25.1
GA,S	508	8.9	185	6.9	302	10.1	15	19.7	6	-

NOTE: Median time intervals are not computed when fewer than 10 cases reported. This table excludes land condemnations, prisoner petitions, deportation reviews, recovery of overpayments, and enforcement of judgments. Includes cases filed in previous years as consolidated cases that thereafter were severed into individual cases. For fiscal years prior to 2001, this table included data on recovery of overpayments and enforcement of judgments.